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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1918

No. [redacted] 234

CLARENCE H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, A CORPORATION, AND ANACONDA COPPER MINING COMPANY, APPELLANTS,

vs.

WILLIAM W. ALDER, CLINTON C. CLARK, LOUIS MASON, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

FILED AUGUST 31, 1918.

(24,242)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 617.

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, A CORPORATION, AND ANACONDA COPPER MINING COMPANY, APPELLANTS,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

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Messrs. Walsh & Nolan, of Helena, Montana; J. T. Fitzgerald, Esq., of Butte, Montana; Fred J. Furman, Esq., of Butte, Montana; A. J. Verheyen, Esq., of Butte, Montana; J. A. Smith, Esq., of Butte, Montana; E. H. Powers, Esq., of Jacksboro, Tenn., Solicitors for Defendants and Appellees.

2 In the District Court of the United States in and for the District of Montana.

No. 21. In Equity.

OLIVIA H. HOPKINS, Washington-Butte Mining Company, a Corporation, and Anaconda Copper Mining Company, a Corporation, Plaintiffs,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Rachael Merriman, Bertha McGowan, and Alice McGowan, Defendants.

Be it remembered, that on December 31, 1914, plaintiffs filed their Bill of Complaint herein, and thereafter motions to dismiss the bill were filed by defendants, which said bill and motions are set forth in the Certificate of Question of Jurisdiction hereinafter contained; that on July 2, 1915, the cause was heard and submitted to the court on said Motions to Dismiss; and thereafter, on July 10, 1915, the Court filed its Opinion dismissing the Bill, said Opinion being in the words and figures following, to wit:

3 In the District Court of the United States for the District of Montana.

No. 21.

OLIVIA H. HOPKINS, Washington-Butte Mining Company, a Corporation, and Anaconda Copper Mining Company, a Corporation, Plaintiffs,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Rachel Merriman, Bertha McGowan, and Alice McGowan, Defendants.

H. C. Hopkins, for Olivia H. Hopkins.

L. O. Evans, W. B. Rodgers, and D. Gay Stivers, for Anaconda Copper Mining Company.

J. L. Templeton and John A. Shelton, for Washington-Butte Mining Company.

Walsh & Nolan, for defendants.

Opinion.

RUDKIN, *District Judge:*

This is a suit in equity to quiet the title of the plaintiffs to certain mining property in the state of Montana against the claim of the defendants to an adverse estate or interest therein. The bill of complaint avers that the plaintiffs are the owners and in possession of the property under patent from the United States, and that the defendants claim an interest therein adversely to the plaintiffs by virtue of certain mining locations of record in Silver Bow County, Montana, where the property is situated. The case is now before the court on motion to dismiss for want of jurisdiction, and

4 a more detailed statement of the allegations of the bill is deemed unnecessary, except to state that no diversity of citizenship appears, and the court is without jurisdiction unless the matter in controversy arises under the constitution or laws of the United States. It seems to be conceded by the plaintiffs that the matter in controversy does not arise under the constitution or laws of the United States unless the court can take into consideration the nature of the adverse claim asserted by the defendants, and, for the purposes of the present motion at least, the court will concede that a federal question is presented if the nature of the adverse claim of the defendants as set forth in the bill of complaint can be taken into consideration in the determination of the jurisdictional question.

The following propositions are so firmly established by repeated

decisions of the Supreme Court as to require no citation of authorities in their support:

1. To give a Federal Court jurisdiction of a suit on the ground that it involves a federal question, there must be a real and substantial dispute as to the effect or construction of the constitution, or of some law of the United States; in other words, it must appear that some right, title, privilege or immunity, on which the right of recovery depends, will be defeated by one construction of the constitution, or a law of the United States, or sustained by the opposite construction.

2. The mere fact that a party claims title to property, immediately or remotely, through a patent from the United States presents no federal question.

3. When the original jurisdiction of a district court of the United States is invoked on the sole ground that the case arises under the constitution or laws of the United States the federal question must appear from the statement of the plaintiff's claim. Jurisdiction cannot be created by anticipating the defendant's claim or by alleging that the defendant will interpose a defense arising under the constitution or laws of the United States.

I do not understand that these general propositions are controverted by the plaintiffs, but they earnestly insist that the rule is otherwise in suits to remove a cloud; that in such cases the plaintiff must, in addition to the statement of his own claim, set forth the claim of the defendant, stating the facts which give it apparent validity as well as those which tend to show its invalidity; and that if a federal question appears from the statement of the claim of either the plaintiff or the defendant a federal court has jurisdiction.

The argument is plausible, but I am far from convinced that a federal question may be raised in this way.

Section 6870 of the Revised Codes of Montana provides that an action may be brought by any person against another who claims an estate or interest in real property adverse to him for the purpose of determining such adverse claim. The relief thus provided may be granted by either a state or a federal court of competent jurisdiction, and in neither court is it necessary to set forth the nature of the adverse claim.

Holland v. Challen, 110 U. S., 15.
Reynolds v. Crawfordsville Bank, 112 U. S., 405.
More v. Steinbach, 127 U. S., 70.
Goldsmith v. Gilliland, 22 Fed. 865.
California Oil & Gas Co. v. Miler, 96 Fed., 12.

Thus in Reynolds v. Crawfordsville Bank, supra, after referring to a similar statute of Indiana, the Court said:

"This act confers upon any one, against whom another, whether in or out of possession, claims an adverse title or interest in real estate, the substantial right of having the disputed title settled by action of the courts."

"Under this statute it has been decided by the Supreme Court of Indiana that it is sufficient to aver that the defendant claims some

interest or title, or pretended interest or title, adverse to the
6 claimant, without stating what the title is."

Nor is there any distinction in this regard between suits to quiet title and suits to remove a cloud. Indeed under modern statutory enactments the distinction has little more than an historical interest. Thus in Holland v. Challen, supra, Mr. Justice Fields said:

"The statute of Nebraska enlarges the class of cases in which relief was formerly afforded by a court of equity in quieting the title to real property. It authorizes the institution of legal proceedings not merely in cases where a bill of peace would lie, that is, to establish the title of the plaintiff against numerous parties insisting upon the same right, or to obtain repose against repeated litigation of an unsuccessful claim by the same parties; but also to prevent future litigation respecting the property by removing existing causes of controversy as to its title, and so embrace cases where a bill qui timet to remove a cloud upon the title would lie."

And, after referring to the distinction between the two classes of cases, the learned justice continued:

"The statute of Nebraska authorizes suit in either of these classes of cases without reference to any previous judicial determination of the validity of the plaintiff's right and without reference to his possession. Any person claiming title to real estate, whether in or out of possession, may maintain the suit against one who claims an adverse estate or interest in it for the purpose of determining such estate and quieting the title."

The precise question now before the court was decided adversely to the contention of the plaintiffs by Judge Wellborn in the well considered case of California Oil & Gas Co. v. Miller, supra. In discussing the manner in which the federal question must appear the learned judge said:

"When the pending matters were argued orally before me, I made the suggestion that in a suit to quiet title, such as the one at bar, the particular claims or contentions of defendants might possibly be parts of the complainant's case. Subsequent reflection convinces me that my suggestion was without merit, and that the complainant need do no more than allege his own title and that the defendant claims adversely to him. The nature of the adverse claim, and the source and manner from and in which it originated are immaterial. If such matters are alleged in the bill, they must be disregarded in determining the jurisdictional question not merely because of their immateriality, but for the further and obvious reason that defendants may not, in their answer, make the claims or contentions which the bill anticipates. The possibility, or even probability, that a federal question may arise during the progress of a cause will not sup-
port original jurisdiction in a Circuit Court, but the plain-
7 tiff's statement of his own claim must show that such a question is necessarily involved, and must be determined. If the defendant should fail to answer and the bill be taken pro confesso, the decree entered by the court would quiet complainant's title against all claims of the defendants. If the defendants should

answer, and set up claims other than those attributed to them by the bill, the answer certainly would be good. Should the defendants, in their answer, simply deny that they assert the claims alleged in the bill, the answer would be bad, because implying that some other adverse title was asserted. If the defendants should deny that they asserted any title prior to the commencement of the suit such denial would not present a material issue. These suppositions show that the only material allegation relating to the defendant is as above stated, that the defendant claims the property adversely to the complainant."

For the foregoing reasons I am convinced that the detailed statement of the defendants' claim contained in the present bill of complaint is wholly unnecessary, and that jurisdiction in a federal court cannot be created by a resort to mere surplusage. The plaintiffs contend that the case of Moore v. McGuire, 205 U. S., 214, is controlling here; but I fail to see its application. Certainly the question now before the court was not discussed in the opinion of the Supreme Court and so far as I can see was not involved at all. A full statement of the case will be found in the opinion of the Circuit Court reported in 142 Federal at page 787. The suit was brought in the United States Circuit Court for the Eastern District of Arkansas to quiet title to a tract of land constituting an island in the Mississippi River. The Circuit Court held that the land was in the state of Mississippi and dismissed the suit for want of jurisdiction. But whether the land was within the jurisdiction of the court or not clearly appeared from the statement of the plaintiff's claim. True, the bill set forth the claim of the defendant, but that added nothing to the statement of the plaintiff's claim in so far as the situs of the property was concerned. The Supreme Court held that the Circuit Court had jurisdiction because the construction of the Act of Con-

8 gress admitting the state of Arkansas to the Union and defining its boundaries was in dispute, but as already stated, the fact that the construction of this Act of Congress was in dispute clearly appeared from the statement of the plaintiff's claim, and without any regard to the adverse claim asserted by the defendant. I am therefore of the opinion that the court is without jurisdiction and the bill is dismissed. Let a decree be submitted accordingly.

Filed July 10, 1915.

GEO. W. SPROULE, *Clerk.*

9 Thereafter, on July 26th, 1915, a Decree was duly signed and thereafter filed and entered herein, being as follows, to wit:

10 In the District Court of the United States in and for the District of Montana.

No. 21. (In Equity.)

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, a Corporation, and Anaconda Copper Mining Company, a Corporation, Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan, and Alice McGowan, Defendants.

Decree.

This suit coming on to be heard on motion of the defendants to dismiss on the ground that the court had no jurisdiction to try said cause, and the same having been fully heard and considered, and the said motion having been sustained, and it appearing to the court that the court has no jurisdiction of the said suit, it is therefore,

Ordered, adjudged and decreed, that the bill herein be, and the same is hereby dismissed on the ground that this court has not jurisdiction of the said cause.

FRANK H. RUDKIN,
Judge of the United States District Court for the Eastern District of Washington, Sitting as Judge of the United States District Court for the District of Montana.

Dated this 26th day of July, 1915.

Filed & Entered July 28, 1915.
GEO. W. SPROULE, *Clerk.*

11 Thereafter, on July 28, 1915, plaintiffs filed their Assignment of Errors herein, in the words and figures following, to wit:

12 In the District Court of the United States in and for the District of Montana.

No. 21. (In Equity.)

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, a Corporation, and Anaconda Copper Mining Company, a Corporation, Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan, and Alice McGowan, Defendants.

Assignment of Errors.

Come now the complainants herein and assign errors in the decision and in the decree of the United States District Court for the District of Montana, in the above entitled cause, as follows:

First. The court erred in sustaining the motion of the defendants herein to dismiss the bill herein on the ground that the court had not jurisdiction of the said cause.

Second. The court erred in holding that it had no jurisdiction of the said cause and in dismissing the bill herein.

Third. The court erred in entering a decree of dismissal herein and in adjudging and decreeing that the said bill be dismissed.

In order that the foregoing assignment of errors may be and appear of record, complainants present the same to the court and pray that such disposition be made thereof as is in accordance with the law and statutes of the United States in such cases made and provided, and complainants pray a reversal of the decree dismissing the bill herein and of the decree of dismissal made and entered herein.

13

H. C. HOPKINS,
Solicitor for Complainant, Olivia H. Hopkins.
J. L. TEMPLEMAN,
JOHN A. SHELTON,
Solicitors for Complainant, Washington-Butte Mining Company.
L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS, AND
D. M. KELLY,
Solicitors for Complainant, Anaconda Copper Mining Company.

Filed July 28, 1915.
GEO. W. SPROULE, *Clerk.*

14 Thereafter, on July 28, 1915, Certificate of Question of Jurisdiction was duly filed herein, in the words and figures following, to wit:

15 In the District Court of the United States in and for the District of Montana.

No. 21. (In Equity.)

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, a Corporation, and Anaconda Copper Mining Company, a Corporation, Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan, and Alice McGowan, Defendants.

Certificate of Question of Jurisdiction on Appeal from the United States District Court for the District of Montana to the Supreme Court of the United States.

Complainants having begun this suit by filing their bill herein, and the defendants Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, J. T. Fitzgerald, C. B. Nolan, Racheal Merriman, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Elizabeth Brown, Nancy Hobbs, Bertha McGowan and Alice McGowan, having filed their motions to dismiss on the ground that the court has not jurisdiction of the said cause, and the said motions having been sustained on the said ground and a decree dismissing the said bill having been made and entered herein on the ground that the court has no jurisdiction of the said cause, and the said complainants being desirous of appealing from the decree dismissing said bill, and having this day applied to the above entitled court for a certificate as required by law in such cases, the court hereby certifies to the Supreme Court of the United States for its decision, the question whether or not upon the record as certified herein the above entitled court had jurisdiction of the said cause:

The bill filed herein December 31, 1914, is in words and figures as follows, to-wit:

16 In the District Court of the United States in and for the District of Montana.

(In Equity.)

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY (a Corporation), and Anaconda Copper Mining Company (a Corporation), Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan, and Alice McGowan, Defendants.

Bill.

To the Honorable the Judges of the District Court of the United States in and for the District of Montana:

Olivia H. Hopkins a citizen and resident of the State of Montana, Washington-Butte Mining Company, a Washington corporation and Anaconda Copper Mining Company a Montana corporation, bring this their bill against the defendants; Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Rachael Merriman, Bertha McGowan and Alice McGowan and thereupon your orators complain and say:

First. That the said Washington-Butte Mining Company is now and was at all times herein mentioned from and since, the 4th day of February 1910, a corporation duly organized and existing under and by virtue of the laws of the state of Washington; that said Anaconda Copper Mining Company is now and was at all times herein mentioned from and since the 18th day of June 1895,

17 a corporation duly organized and existing under and by virtue of the laws of the state of Montana; that the Complainant Olivia H. Hopkins and the Defendants Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Lou H. Hadwick, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Rachael Merriman, Bertha McGowan and Alice McGowan, are citizens and residents of the state of Montana and the defendant Nancy Hobbs is a citizen and resident of the state of Tennessee and the defendant Annie Stalker is a citizen and resident of the state of Kansas; that the defendants Bertha McGowan and Alice McGowan are infants of the ages of 11 and 9 years respectively.

Second. That complainants are now and that they and their predecessors in interest have continuously for more than 20 years

immediately preceding the commencement of this action been the owners, their title being based on undisputed evidence and holding under a patent from the Government of the United States, (copy of such patent being hereunto annexed marked Exhibit "A"), and in the actual possession of the following particularly described land situated in Silver Bow County, Montana, the same being a portion of the Butte & Boston Placer Mining Claim, Survey, No. 3379 to wit: beginning at corner Number 4 of said Butte & Boston Placer Mining Claim, Survey No. 3379, a granite stone marked 4-3379; thence north 80 degrees 50 minutes west 182 feet to Corner No. 5, a quartz stone marked 5-3379; thence south 77 degrees 12 minutes west, 906.8 feet thence north 0 degrees 12 minutes west, 600 feet; thence north 77 degrees 12 minutes east, 278 feet; thence south 63 degrees 15 minutes east, 482.5 feet more or less to Corner No. 3 of said Survey No. 3379 corner stone 20 x 8 x 6 inches, marked 3-3379 thence south 42 degrees 05 minutes east, 398 feet to place of beginning; together with all of the mines, ores and minerals therein contained.

Third. Complainants allege that the following named paper writings were on the dates set after their names respectively filed
18 for record in the office of the County Clerk and Recorder of Silver Bow County, Montana and the same were recorded and now so remain of record in the said office and in the book and page of Quartz Lode Location records set after their respective names as follows:

Name of paper writing.	Date filed for record.			Vol. and page, lode location, records where recorded.	
	Year.	Month.	Day.	Volume.	Page.
Amended Declaratory Statement, Location Hornet Lode Mining Claim	1900,	June	2nd	U.	213
Amended Declaratory Statement, Location Rabbit Lode Mining Claim	1900,	May	9th	Z.	217
Amended Declaratory Statement, Location Hope Lode Mining Claim	1900,	June	16th	Z.	213
Amended Declaratory Statement, Location Olivia Lode Mining Claim	1900,	May	24th	Z.	215
Declaratory Statement, Location Gulf Lode Mining Claim	1900,	May	24th	Q.	96
Certificate of Location Wilson Lode Mining Claim	1900,	Nov.	22nd	10	47
Certificate of Location Marshall Lode Mining Claim	1912,	Nov.	22nd	10	48
Certificate of Location Wrangle Lode Mining Claim	1913,	Jan.	14th	10	78
Certificate of Location Helen Lode Mining Claim	1913,	Jan.	14th	10	79

That each of said paper writings is by copy thereof, hereunto annexed, marked respectively, Exhibit- "B" "C" "D" "E" "F" "G" "H" "I" and "J." That the land embraced within the exterior boundaries of each of the said pretended locations is either wholly or partly part and parcel of the land hereinbefore described and alleged to be owned by the Complainants by virtue of a patent therefor as a Placer mining claim issued by the United States to Complainants' predecessors in interest; that the land herein described is embraced within the exterior boundaries of two lode locations made or attempted to be made prior to the date of the location of the said Butte & Boston placer, which lode locations were known respectively as Point Pleasant Lode claim and Pleasant View lode claim; that said last named lode claims if valid in the beginning continued in force (except for the proceedings hereinafter set forth) to and including the date of the issuance of said patent; that the said Point Pleasant and
19 Pleasant View lode claimants filed in the United States Land Office at Helena, Montana, in due time two adverse claims to the said application for patent for the said Butte & Boston Placer which said adverse claims were in due form of law and were filed during the period of publication of notice of said application for patent and in the same said Point Pleasant and Pleasant View lode claimants by reason of said Point Pleasant and Pleasant View lode claims asserted adversely to said applicants a claim of right to the possession of so much of the land embraced in said application for patent as was in conflict with said lode claims and within 30 days after the filing of said adverse claims, said adverse claimants with respect to each of said adverse claims, filed against said applicants in the second Judicial District Court of the State of Montana a complaint in due form of law to determine the right of possession as to the land embraced in said adverse claims; said applicants filed answer in each of said suits, which suits were regularly heard and determined and a decision and judgment duly given and made in each of them in favor of the defendants therein and the judgment roll in each of said suits duly certified was filed in the said United States Land Office together with the requisite description and certificate of the Surveyor General, whereupon said proceedings and judgment rolls being certified to the Commissioner of the General Land Office, and on payment of the purchase price for the land said patent was issued in conformity with said judgments; that the said defendants and each of them claim that the said patent was to the extent of the land embraced in said Point Pleasant and Pleasant View lode claims wholly invalid and that it was rendered so invalid because of the existence and continuance in force of said claims at the date of issuance of said patent and if not so invalid that the said land herein particularly described and all of the same with any and all lodes, veins and deposits of mineral therein contained was, because of the known existence by said applicants for patent at the date of said application within said described land of certain veins and lodes re-
20 served and excepted from the said patent and that the title thereto remained in the United States of America until so located or attempted to be located by the said defendants or their

predecessors in interest and said defendants further claim that the lode location of any of the said lodes and veins within the said ground and by them so claimed to be subject to location may embrace an area of surface ground having a length and breadth of 1500 feet and 600 feet respectively and all of the said pretended lode locations are so made as to embrace an area of surface ground of that extent; that none of the said claims of the defendants can be sustained; that regardless of whether said Point Pleasant and Pleasant View lode claims so existed and so continued in force said patent was not wholly or as to the land so described or as to any land embraced within its exterior boundaries invalid; that no vein or lode within the meaning of the terms as used in Section 2333 of the Revised Statutes of the United States was known at the date of said application to exist within said Butte & Boston Placer Mining Claim; that if any veins or lodes had been so reserved or excepted or if such patent as to the same was invalid a lode location of any one of them could not embrace an area of enclosing surface ground exceeding 25 feet on each side of the center of the vein or lode located, and could not embrace any portion of such vein or lode not actually uncovered and exposed to view at or prior to the date of said application for patent and on said date there had been no opening made on said ground beneath the surface of bedrock and no exposure of the surface of bedrock of a greater extent than ten feet in any one direction; that the said described land or any lode, vein or deposit of mineral or any land embraced within the exterior boundaries of the said patent (excepting only segments of veins apices of which are outside of said Butte & Boston Placer) was not reserved or excepted therefrom and said pretended lode claims are and each of them is entirely invalid and the said declaratory statements of location and certificates
21 of location so of record, are and each of them is invalid and constitute and each of them constitutes a cloud upon the title of the complainants in and to the said premises and every part thereof and reduce the market value thereof; that the said defendants have not and none of them has any right, title or interest either at law or in equity in or to the said lands or any part thereof; that the determination of the rights of the complainants herein requires a determination of the effect of said judgments, a construction of the laws of the United States under which the said proceedings were had in the said land office and by authority of which the said patent was issued, and a determination of the extent of the rights and character of the title conveyed by such patent; of what may, by the provisions of said section 2333, be reserved and excepted from it and if it should be held that any lodes or veins or any surface ground was reserved or excepted from the land which said patent purports to convey then a determination of the extent to which such lode or vein is subject to appropriation and location and the extent of the area of surface ground which may be embraced in a lode location made on any lode or vein within the exterior boundaries of the land described in the said patent.

Fourth. That the said defendant Clinton C. Clark claims a distinct and individual interest in and to the said lands and premises

by virtue of the said Helen attempted location; that he also claims a distinct and individual interest in and to the said lands and premises by virtue of the said Gulf attempted location; that the said defendant Walker claims a distinct and individual interest in and to the said lands and premises by virtue of the said Wrangle, Wilson and Marshall attempted locations; that he also claims a distinct and individual interest in and to the said lands and premises by virtue of the said Rabbit, Olivia, Hope and Hornet attempted locations; that the defendants Leroux, Merriman, Bertha McGowan and Alice McGowan claim distinct and individual interests in and to the said lands and premises by virtue of the said Gulf attempted location; that the said defendants Thornton, Woods M. F. Cleary, E. J. Cleary, Keppler and Nolan claim distinct and individual interests in and to the said lands and premises by virtue of the said Hornet, Hope, Olivia and Rabbit attempted locations; that the said defendant, L. O. Clark claims a distinct and individual interest in and to the said lands and premises by virtue of the said Rabbit, Olivia, Gulf, Hope and Hornet attempted locations; that the defendants Farlan, Brown, Fitzgerald, Stalker, Hadwick, Hobbs and Bushnell claim distinct and individual interests in and to the said lands and premises by virtue of the said Rabbit, Olivia, Gulf and Hope attempted locations and that none of said defendants claim any interest in said lands by reason of any of said attempted locations, except as herein stated; that the matter in controversy herein as to each of the said defendants exceeds, exclusive of interest and costs the sum or value of $3,000 and this suit is one arising under the laws of the United States.

22

In consideration whereof and forasmuch as the complainants have no remedy at law and are only relievable in equity and to the end that the complainants may have the relief which they can only obtain in a court of Equity and to the end that the said defendants and each of them may answer herein but not upon oath or affirmation the benefit whereof is expressly waived by the complainants who now pray the court that a decree be entered herein that the cloud caused by the recording of the said declaratory statements of location and certificates of location in the office of the County Clerk and Recorder of Silver Bow County, Montana, and each and all of them be removed, and the same decreed to be no cloud upon the title of the complainants in and to the said premises and that the title of the complainants therein be quieted and for such further and other relief in the premises as equity and good conscience may require, and for costs of suit.

23

Complainants pray for general relief.

May it please your Honors to grant unto the complainants a writ of subpœna, to be directed to the said, Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary Adolph Keppler, J. B. Woods, Rachael Merriman, Bertha McGowan and Alice McGowan and each of them thereby commanding them, and each of them, at a certain time and

under a certain penalty therein to be limited personally to appear before this Honorable Court and then and there full, true, direct and perfect answer make.

H. C. HOPKINS,
Solicitor for Complainant Olivia H. Hopkins.
L. O. EVANS,
W. B. RODGERS AND
D. GAY STIVERS,
Of Butte, Montana,
Solicitors for Complainant Anaconda Copper Mining Co.
J. L. TEMPLEMAN,
JOHN A. SHELTON,
Solicitors for Complainant
Washington-Butte Mining Co.

24 EXHIBIT A.

(4-459a.)

General Land Office. No. 26344.

Mineral Certificate. No. 3170.

The United States of America to S. V. Kemper, Josephine Lorenz, to all to whom these presents shall come, Greeting:

That whereas, in pursuance of the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two, and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the plat and field notes of survey and the certificate No. 3179 of the Register of the Land Office at Helena, in the State of Montana, accompanied by other evidence, whereby it appears that Simeon V. Kemper and Josephine Lorenz did, on the fourteenth day of September, A. D. 1895, duly enter and pay for that certain placer mining claim and premises designated by the Surveyor General as Lot No. 3379, known as the "Butte and Boston" Placer Mining Claim, and embracing a portion of township 3 north of range 7 west of the principal meridian in the — mining district, in the County of Silver Bow and State of Montana, in the district of lands subject to sale at Helena, and bounded and described and platted as follows:

Beginning at corner No. 1, being the east quarter corner of section 17, in T. 3 N. of R. 7 W, of the principal meridian.

Thence, first course, east 818 feet to corner No. 2;

Thence second course, south 63 degrees 15 minutes east,
25 800 ft. to corner No. 3;

Thence, third course, south 42 degrees 05 minutes east, 398 feet to corner No. 4;

Thence, fourth course, north 80 degrees 50 minutes west, 182 feet to corner No. 5;

Thence, fifth course, south 77 degrees 12 minutes west, 1507 feet to corner No. 6;

Thence, sixth course, south 12 degrees 48 minutes east, 394 feet to corner No. 7½;

Thence, seventh course, north 87 degrees west, 232.5 feet to corner No. 8;

Thence, eight- course, north 0 degrees 12 minutes west, 1332 ft. to corner No. 1, the place of beginning.

Said lot No. 3379 containing 28.25 acres of land, more or less.

Now know ye, that there is therefore, hereby granted by the United States unto the said Simeon V. Kemper and Josephine Lorenz and to their heirs and assigns, the said placer mining premises hereinbefore described.

To have and to hold said mining premises, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said grantees above named, and to their heirs and assigns forever; subject nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted in its exterior limits to the boundaries of the said mining premises, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, which may have been discovered within said limits subsequent to and which were not known to exist on the eleventh day of May, A. D. 1891.

Second. That should any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above described premises at said last named date, the same is expressly excepted and excluded from these presents.

26 Third. That the premises hereby conveyed may be entered by the proprietor of any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper of other valuable deposits, for the purpose of extracting and removing the ore from such vein or lode, should the same, or any part thereof, be found to penetrate, intersect, pass through or dip into the mining ground or premises hereby granted.

Fourth. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws customs and decisions of courts. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

Fifth. That in the absence of necessary legislation by Congress the Legislature of Montana may provide rules for working the Mining claim or premises hereby granted, involving easement, drainage and other necessary means to the complete development thereof.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the nineteenth day of December, in the year of our Lord one thousand eight hun-

dred and ninety five, and of the Independence of the United States the one hundred and twentieth.

By the President: GROVER CLEVELAND,
By M. McKEAN, *Secretary.*

L. Q. C. Lamar, Recorder of the General Land Office, (General Land Office Seal.)

Recorded Vol. 236, pages 313 to 316, inclusive, records of the General Land Office.

27 EXHIBIT B.

Hornet Lode Mining Claim, Summit Valley Mining District.

SILVER BOW COUNTY,
State of Montana:

The undersigned, who are citizens of the United States, hereby declare and give notice to all persons concerned that they have discovered a vein or lode bearing silver & copper and other valuable deposits, and that they did, on the 19th day of March, 1900, under and by virtue of Chapter VI, Title XXXII of the Revised Statutes of the United States, and the laws amendatory thereof, and the laws of the State of Montana, locate and claim a mining claim upon said lode or vein which was at said time and is now designated and named the "Hornet" quartz lode mining claim, extending along said vein or lode 100 feet in an eastern direction and 1,400 feet in a western direction from the center of the discovery shaft, at which a notice of location was posted on said day, as provided by law, and 300 feet on each side from the middle or center of said lode or vein at the surface; comprising in all 1500 feet in length along said vein or lode, and 600 feet in width.

The general course of said vein or lode is northwest & Southeast; with all the rights and privileges as to surface ground and lodes, veins or ledges within the boundaries of said claim, and otherwise, and the metals, minerals and valuable deposits of every kind contained in said veins, lodes or ledges or within said boundaries which are given or allowed by the laws of the United States aforesaid, or the state of Montana.

Said mining claim is situated in Summit Valley Mining District, Silver Bow County, Montana, and is about two and a half miles east of Butte, City, Montana.

The adjoining claims are the Bullwhacker on south; Bertha and Copper Queen on the east; May Molvr Placer on the north, and M. A. No. 888 on the west.

Since the date of said location the undersigned have run a crosscut and sunk a discovery shaft upon said claim which is located about 316 feet southwest from corner No. 1 of the claim, the
28 northeast corner, and its dimensions are as follows, to-wit; cleaned out old shaft 30 feet deep 3½ by 6 feet & from bottom thereof ran a crosscut 12 feet long 3 feet wide by 6 feet high; said shaft shows a well defined crevice and valuable deposit.

The location is distinctly marked on the ground as follows, to-wit:

Beginning at Corner No. 1 of this claim, the N. E. Corner, a post four inches square by four feet six inches in length and set one foot in the ground with a mound of earth and stone four feet in diameter by two feet in height around the post and marked corner post No. 1 Hornet Lode, Located March 19, 1900;

And running thence in a westerly direction 1,500 feet to corner No. 2, the N. W. corner, a post four inches square by four feet six inches in length and set one foot in the ground with a mound of earth and stone four feet in diameter by two feet in height around the post, marked corner post No. 2 Hornet Loge, located Mar. 19, 1900;

And running thence in a southerly direction 600 feet to a corner No. 3, the S. W. corner, a post four inches square by four feet six inches in length and set one foot in the ground with a mound of earth and stone four feet in diameter by two feet in height around the post and marked corner post No. 3 Hornet Lode, located Mar. 19, 1900;

And running thence in an easterly direction 1,500 feet to corner No. 4, the S. E. corner, a post four inches square by four feet six inches in length and set one foot in the ground with a mound of earth and stone four feet in diameter by two feet in height around the post, and marked corner post No. 4 Hornet Lode located Mar. 19, 1900.

And running thence in a northerly direction to corner No. 1 the place of beginning.

This is an amended location notice for record to more definitely describe said claim, the original notice being dated June 2, 1900, & duly recorded June 2, 1900.

The undersigned intend to hold this claim under and
29 according to the laws of the United States and the State of Montana, and to record this declaratory statement in the county clerk's office as provided by law.

Dated this 27th day of December, 189–.

SAMUEL KIFT,
ISAAC KNOYLN,
Locator- and Claimant-.

STATE OF MONTANA,
County of Silver Bow:

Samuel Kift, being first duly sworn on oath, says, that he is of lawful age, and one of the locators and claimants of the foregoing quartz lode mining claim; that he has read the foregoing declaratory statement, and knows the contents thereof, and the matters and things therein contained are true to his own knowledge.

SAMUEL KIFT.

Subscribed and sworn to before me this 27 day of December, 1900.

[NOTARIAL SEAL.] GEO. M. BOURQUIN,
Notary Public in and for Silver Bow County, Montana.

Recorded December 27, 1900, in Volume "U" of Lodes, at page 213.

30 EXHIBIT C.

Amended Declaratory Statement of the Rabbit Lode Mining Claim.

Notice is hereby given that R. O. Merriman, who was a citizen of the United States did, on the 8th day of May, 1900, discover a vein or lode of quartz or other rock in place bearing copper and other valuable deposits within the hereinafter described lode claim, and that he did on said day locate the same as the "Rabbit" Lode Mining Claim, by posting the notice required by law at the point of discovery.

That the general course of said vein is easterly and westerly.

That the total length of surface included and claimed in said location is 1,500 feet along the course of the vein, being 100 feet in an easterly and 1,400 feet in a westerly direction from the point of discovery; and the total width of surface is 600 feet, being 300 feet on the northerly and 300 feet on the southerly side of the middle or center of said vein.

That, within thirty days thereafter, he marked the boundaries of said claim so that they could be readily traced, by placing a post at the northwest corner of said claim, and marking the same "northwest corner No. 1 Rabbit Lode"; and from thence 600 feet in a southerly direction, placing a post at the southwest corner, and marking the same "Southwest corner No. 2 Rabbit Lode"; and from thence in an easterly direction 1,500 feet, placing a post at the southeast corner, and marking the same "Southeast corner No. 3 Rabbit Lode"; and from thence 600 feet northerly, placing a post at the northeast corner, and marking the same "Northeast corner No. 4, Rabbit Lode";

That the exterior boundaries of said claim is a line extending from post to post around said claim.

That each of said posts was not less than four inches square and four feet six inches in length and was set one foot in the ground and had a mound of earth four feet in diameter and two feet in height around the same.

31 That, from the point of discovery and said discovery shaft, Rand's Milk Ranch is distant about 2,000 feet in a northerly direction; Columbia Gardens is distant about 400 ft. in an easterly direction.

That the Copper Queen Lode Mining Claim adjoins said location on the north; the Bertha Lode Claim on the east, and on the west Placer Application No. 888.

That, for the purpose of perfecting said location, said locator did, within thirty days after the posting of said notice of location, sink, or cause to be sunk a discovery shaft at the point of discovery, three feet wide by eight feet long and ten and one-half feet deep; and that said shaft disclosed a well defined crevice and valuable deposit of ore ten feet below the lowest part of the rim of said shaft at the surface, and that said shaft was sunk from the surface of the ground.

That within thirty days thereafter, he verified and filed in the office of the County Clerk and Recorder of Silver Bow County, Montana, a declaratory statement, which is recorded on page 94 of Book

"Q" of Declaratory Statements, records of said county, to which reference is hereby made and the same, by this reference, is hereby incorporated herein and made a part of this amended declaratory statement.

That the undersigned affiant is the successor in interest of said locator in an undivided interest in said lode claim, and that, as such, she makes this amended declaratory statement for the purpose of obtaining the benefit to said locator and herself and co-owners of the act of the legislative assembly of the state of Montana, of March 15th, 1901, with reference to filing additional or amended declaratory statement, and for the purpose of correcting any mistake or imperfection in said declaratory statement, and without relinquishing any right under said location and said declaratory statement.

32 The premises included in this Location were, in whole or in part, heretofore located and claimed under the Point Pleasant, Pleasant View and Hornet locations.

L. O. CLARK,
One of the Successors in Interest of
R. O. Merriman, Locator and Claimant.

STATE OF MONTANA,
County of Silver Bow, ss:

L. O. Clark, being duly sworn on oath, deposes and says: That she is one of the successors in interest of an undivided interest of R. O. Merriman, the locator and claimant of the Rabbit Lode Mining Claim, described in the foregoing amended declaratory statement; that said amended declaratory statement is made by her in good faith, and to secure the benefit of the laws of the state of Montana in her behalf and that of said Merriman and her other co-owners in said claim; that she has heard read the foregoing amended declaratory statement, and knows the contents thereof, and that all the matters therein contained are true.

L. O. CLARK.

Subscribed and sworn to before me this 29th day of September, 1906.

[NOTARIAL SEAL.]

FRANK L. RILEY,
Notary Public in and for the
County of Silver Bow, Montana.

Recorded September 29, 1906, in Volume "Z" of Lodes, page 217.

33 EXHIBIT D.

Amended Declaratory Statement of the Hope Lode Mining Claim.

Notice is hereby given that R. O. Merriman, who was a citizen of the United States, did, on the 13th day of May, 1900, discover a vein or lode of quartz or other rock in place, bearing gold, copper and other valuable deposits within the boundaries of the hereinafter de-

scribed lode claim, and did locate the said vein or lode and lode claim as the "Hope" Lode Mining Claim.

That the general course of the said vein is easterly and westerly. That he posted the notice required by law at the point of discovery.

That he claimed 1,500 feet along the course of the vein, being 550 feet in an easterly direction and 950 feet in a westerly direction from the said point of discovery, and 600 feet in width of surface, being 300 feet on the northerly side and 300 feet on the southerly side of the center or middle of said vein.

That, within thirty days thereafter, he marked the boundaries of said location so that they could be readily traced.

That he placed a post at the northeast corner of said location and marked the same "Northeast corner No. 1, Hope Lode";

Thence in a westerly direction 1,500 feet to the northwest corner, at which he placed a post, marked "Northwest corner No. 2, Hope Lode";

And from thence in a southerly direction, 600 feet, to the southwest corner, at which he placed a post and marked the same "Southwest corner No. 3, Hope Lode";

And from thence running easterly 1,500 feet, to the southeast corner, at which he placed a post, marked "Southeast corner No. 4, Hope Lode".

That each of said posts was not less than four inches square, by four feet six inches in length, and was set one foot in the ground, and had a mound of earth four feet in diameter by two feet in height, around the same.

34 That the exterior boundaries of said claim is a line extending from one of said posts to the other, around the claim.

That said claim is situated in Section 16 Township 3 North, Range 7 west, Silver Bow County, Montana.

That the discovery shaft is situated at the point of discovery, and is located 550 feet from the easterly end, and 950 feet from the westerly end, thereof.

That measured from said discovery shaft, which is at the point of discovery, as initial point, the following natural objects and permanent monuments are distant as follows, to-wit:

The new Northern Pacific roundhouse is distant about three-fourths of a mile in a westerly direction, and the Brundy House is distant about two thousand feet in a southerly direction.

That the adjoining claim on the east is the Bertha Lode Claim, and on the south is the Bullwhacker lode claim.

That within thirty days from the date of discovery and posting said notice, said locator for the purpose of perfecting said location, sunk, or caused to be sunk at the point of discovery, a discovery shaft 3½ feet wide by 5 feet long, to the depth of 12 feet, and for the balance of the depth, 3½ feet wide by 3½ long, to the entire depth of 22½ feet; and that said shaft disclosed a well defined crevice and valuable deposit of ore more than 10 feet beneath the lowest part of the rim of the same at the surface, and that said shaft was sunk from the surface.

That, within said thirty days, said locator verified, by his oath, and filed in the office of the county clerk and recorder of Silver Bow

County, Montana, a declaratory stat-ment of said lode claim, and that the same is of record on page 97 of Book "Q" of Declaratory Statements, Records of Silver Bow County, Montana, to which reference is hereby made, and the same, by said reference, is
35 hereby incorporated herein and made a part of this amended declaratory statement.

That the undersigned affiant is the successor in interest of said locator in an undivided interest in said lode claim, and that, as such, she makes this amended declaratory statement for the purpose of obtaining the benefit to said locator and herself and co-owners of the act of the legislative assembly of the state of Montana of March 15th, 1901, with reference to filing additional or amended declaratory statements, and for the purpose of correcting any mistake or imperfection in said declaratory statement, and without relinquishing any right under said location and said declaratory statement.

The premises included in this location were in whole or in part, heretofore located and claimed under the Point Pleasant and Pleasant View and Hornet Locations.

L. O. CLARK,
One of the Successors in Interest of R. O. Merriman, Locator and Claimant.

STATE OF MONTANA,
County of Silver Bow, ss:

L. O. Clark, being duly sworn on oath, deposes and says: that she is one of the successors in interest of an undivided interest of R. O. Merriman, the locator and claimant of the Hope Lode Mining Claim, described in the for-going amended declaratory statement; that said amended declaratory statement is made by her in good faith, and to secure the benefit of the laws of the state of Montana in her behalf, and that of said Merriman and her other co-owners in said claim; that she has heard read the foregoing amended declaratory statement and knows the contents thereof, and that all the matters therein contained are true.

L. O. CLARK.

36 Subscribed and sworn to before me this 29th day of September, 1906.

[NOTARIAL SEAL.] FRANK L. RILEY,
Notary Public in and for the County of Silver Bow, Montana.

Recorded September 29, 1906, in Volume "Z" of Lodes, at page 213.

37 EXHIBIT E.

Amended Declaratory Statement of the Olivia Lode Mining Claim.

Notice is hereby given that R. O. Merriman, who was a citizen of the United States, did, on the 16th day of May, 1900, discover a vein or lode of quartz and other rock in place, bearing gold, copper and other valuable deposits within the boundaries of the claim hereinafter described, and that he did, on said day, locate the same as the "Olivia" Lode Mining claim, by posting the notice required by law at the point of discovery.

That the general course of the vein is easterly and westerly.

That the total of surface claimed and included in said location is 1,500 feet along the course of the vein, being 325 feet in an easterly direction and 1,175 feet in a westerly direction from the said point of discovery; and that the total width of surface is 600 feet, being 300 feet on the northerly side and 300 feet on the southerly side, of said vein.

That, within thirty days thereafter, he marked the boundaries of said claim so that they could be readily traced by placing a post at each corner thereof, to-wit:

By placing a post at the northeast corner, and marking the same "Northeast Corner No. 1 Olivia Lode," by placing a post at the northwest corner 1,500 feet westerly therefrom, and marking the same "Northwest corner No. 2, Olivia Lode"; by placing a post at the southwest corner, 600 feet southerly therefrom, and marking the same "Southwest corner No. 3 Olivia Lode"; and by placing a post at the southeast corner, 1,500 feet easterly therefrom, and marking the same "Southeast corner No. 4 Olivia Lode:

That the exterior boundaries of said claim is a line extending from one of said posts to the other, around the claim.

That each of said posts was not less than four inches square by four feet six inches in length, and was set one foot in the
38 ground and had a mound of earth four feet in diameter and two feet in height around the same.

That said lode claim is situated in section 16, township 3 north, range 7 west, Silver Bow County, Montana.

That measured from the point of discovery *and* the new Northern Pacific roundhouse is distant about three-fourths of a mile in a westerly direction.

That to the north and adjoining or lying a short distance therefrom is the Copper Queen Lode Mining Claim.

That said locator, for the purpose of perfecting said location, did, within thirty days after the date of discovery and posting said notice of location, sink a discovery shaft, at the point of discovery, which discovery shaft is 3½ feet wide by 5 feet long and 10½ feet deep, and which disclosed a well defined crevice and valuable deposit of ore ten and one half feet below the surface of the ground, at the lowest part of the rim of said shaft, and which shaft was sunk from the surface.

That, within thirty days after said posting, said locator verified

by his oath, and filed in the office of the County Clerk and Recorder of Silver Bow County, Montana, a declaratory statement which is of record at page 95 of Book "Q" of Declaratory Statements, Records of said County, to which reference is hereby made and the same, by this reference, is hereby incorporated herein and made a part of this amended declaratory statement.

That the undersigned affiant is the successor in interest of said locator in an undivided interest in said lode claim, and that, as such, she makes this amended declaratory statement for the purpose of obtaining the benefit to said locator and herself and co-owners of the act of the legislative assembly of the state of Montana of March 15th, 1901, with reference to filing additional or amended declaratory statements, and for the purpose of correcting any mistakes or imperfections in said declaratory statement, and without relinquishing any right under said location and said declaratory statement.

39 The premises included in this location were, in whole or in part, heretofore located and claimed under the Point Pleasant, Pleasant View and Hornet locations.

L. O. CLARK,
One of the Successors in Interest of
R. O. Merriman, Locator and Claimant.

STATE OF MONTANA,
County of Silver Bow, ss:

L. O. Clark, being duly sworn on oath, deposes and says: That she is one of the successors in interest of an undivided interest of R. O. Merriman, the locator and claimant of the Olivia Lode Mining Claim, described in the foregoing amended declaratory statement; that said amended declaratory statement is made by her in good faith, and to secure the benefit of the laws of the state of Montana in her behalf, and that of said Merriman and her other co-owners *is* said claim; that she has heard read the foregoing amended declaratory statement, and knows the contents thereof and that all the matters therein contained are true.

L. O. CLARK.

Subscribed and sworn to before me this 29th day of September, 1906.

[NOTARIAL SEAL.] FRANK L. RILEY,
Notary Public in and for the County of
Silver Bow, Montana.

Recorded September 29, 1906, in Volume "Z" of Lodes, at page 215.

40 EXHIBIT F.

Declaratory Statement of Gulf Lode Mining Claim.

Notice is hereby given that the undersigned who is a citizen of the United States has discovered a vein of quartz or other rock in place bearing gold and copper and other valuable deposits and after said discovery, to-wit, on the 1st day of May, 1900, did locate said lode as the Gulf lode mining claim by posting the notice required by law at the point of discovery.

The general course of the vein is easterly and westerly. The total length of surface included in said location is 1,500 feet along the course of the vein, being 100 feet in an easterly direction and 1,400 feet in a westerly direction from the said point of discovery and the total width of the said surface is 600 feet, being 300 feet on the north and 300 feet on the south side of the middle of the vein.

The boundaries of the said location are so distinctly marked upon the ground that they can be readily traced being more particularly described as follows, to-wit:

Beginning at the northeast corner which is marked by a post not less than four inches square and four feet six inches in leng*ht* set one foot in the ground, marked northeast corner No. 1 Gulf Lode, with a mound of earth four feet in diameter by two feet in height around said post; and running thence in a westerly direction fifteen hundred feet to the northwest corner, which is marked by a post not less than four inches square and four feet six inches in length, set one foot in the ground, marked northwest corner No. 2, Gulf Lode, with a mound of earth four feet in diameter and two feet in height around said post; and running thence in a southerly direction six hundred feet to the southwest corner, which is marked by a post not less than four inches square by four feet six inches in leng*ht*, set one foot in the ground, marked southwest corner No. 3, Gulf Lode, with a mound of earth four feet in diameter and two feet in height around said post; and running thence in an easterly direction fifteen hundred feet to the southeast corner No. 4, Gulf Lode, with a mound of earth four feet in diam-
41 eter and two feet in height around said post; and running thence in a northerly direction six hundred feet to the place of beginning.

The said claim is situated in Summit Valley Mining District, Silver Bow County, Montana, and measured from discovery point of said claim as an initial point. The following natural objects and permanent monuments are distance as follows, to-wit:

New Northern Pacific roundhouse is distant about three and a quarter miles in a westerly direction. The adjoining claims are as follows, to-wit: On the Northeast the Bertha lode mining claim, on the east the — lode mining claim, on the south the — lode mining claim, on the west the — lode mining claim. This claim is situated in section 16, township 3 N., R. 7 W., Montana meridian.

For the purpose of perfecting the location of this claim as required by law the under-signed has heretofore and within ninety days of posting said notice of location done or caused to be done the following development work upon said claim, to-wit:

Sinking a discovery shaft twenty-two feet deep and three and half feet by seven feet in dimensions, and said development work has disclosed a well-defined *crevasse* and valuable deposit of ore. The undivided interest in the above described location claimed by each of the undersigned is indicated by the fraction set after each name.

R. O. MERRIMAN,
Locator and Claimant.

STATE OF MONTANA,
County of Silver Bow, ss:

R. O. Merriman, being duly sworn, on oath says that he is of lawful age and the locator and claimant of the mining claim described in the foregoing declaratory statement, that the said location has been made in good faith, and that he has read the said declaratory statement and knows the contents thereof and
42 that all the statements therein contained are true.

R. O. MERRIMAN.

Subscribed and sworn to before me this 22d day of May, A. D. 1900.

[NOTARIAL SEAL.] JOHN N. KIRK,
Notary Public in and for Silver Bow County, Montana.

Filed for record May 20th, 1900, at 4:10 o'clock P. M.
J. E. MORAN,
County Recorder,
By H. E. BURKE, *Deputy.*

43 EXHIBIT G.

Certificate of Location of the Wilson Quartz Lode Mining Claim.

I, Frank Walker, a citizen of the United States, of lawful age, do hereby certify and declare as follows, to-wit:

That on the 16th day of November, A. D. 1912, the Wilson Quartz Lode Mining Claim, situated in Summit Valley Mining District, county of Silver Bow, state of Montana, was duly discovered.

That on said day a written or printed notice of location of said claim was duly posted, conspicuously, at the point of discovery on said claim, which said notice contained the name of the locator, the date of the location (which said date of location was the date of the posting of such notice) and the approximate area of the claim intended to be appropriated.

That thereafter and within thirty days after the posting of said notice of location, the locator distinctly marked the location of said

claim on the ground so that its boundaries could be readily traced, by placing monuments at each corner and angle of said claim, which said monuments consists of trees, posts, stumps, stones and boulders described as follows, to-wit:

Beginning at the N. W. Cor. No. 1 of this claim, which is a post 6″ x 6″ 5 feet long and mound 4 feet wide and two feet high, post is marked Northwest Cor. No. 1 of the Wilson Lode;

Thence first course easterly a distance of 1500 feet to the Corner No. 2 of this claim, which is a mound 4 feet wide and 2 ft. high and a post 6″ x 6″ 5 feet long marked Northeast Cor. No. 2 of the Wilson Lode;

Thence second course southerly a distance of 600 feet to the — Corner No. 3 of this claim, which is a mound 4 ft. wide and 2 ft. high and post 6″ x 6″ 5 ft. long marked southeast Cor. No. 3 of the Wilson Lode;

44 Thence third course westerly a distance of 1,500 feet to the — Cor. No. 4 of this claim, which is a mound 2 ft. high and 4 ft. wide and post 6″ x 6″ 5 ft. long, marked Southwest Cor. No. 4 of the Wilson Lode;

Thence fourth course northerly a distance of 600 feet, to the N. W. Cor. No. 1, the place of beginning.

That each tree so marked was at least eight inches in diameter and blazed on four sides; that each post so marked was at least four inches square by four feet and six inches in length, set one foot in the ground, except where solid rock occurred at a less depth, in which case the post was set upon such rock and in all cases such posts were surrounded by a mound of earth and stone at least four feet in height and was surrounded by a mound of earth and stone four feet in diameter by two feet in height; that each stone so marked was at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth and stone alongside at least four feet in diameter by two feet in height; that each boulder so marked was at least three feet above the natural surface of the ground on the upperside of said boulder.

That within sixty days after the date of posting said notice of location, the locator named herein excavated a tunnel on said claim at the point of discovery 3 feet wide by 6 feet in height and 12 feet in length, and to the depth of at least ten feet, vertically, below the natural surface of the ground, and which said tunnel consists of at least one hundred and fifty cubic feet of excavation, said tunnel is leading from the bottom of a shaft which is 4′ x 6′ and 22 feet deep.

The said locator did there, in the bottom of said tunnel at the lowest vertical depth thereof, disclose the vein, lode or deposits so located.

The said locator claim- 150 feet in a — easterly direction and 1350 feet in a westerly direction along the course of the vein
45 each way from the discovery shaft, and 300 feet on each side of the center of the vein, the said claim located being 600 feet wide by 1,500 feet in length.

That the following reference is hereby made to natural objects

and permanent monuments so as to identify said claim, to-wit; (none given).

That the following claims adjoin this claim, to-wit:

On the South the Bull Whacker quartz lode mining claim.

That the claim so located, marked and designated as aforesaid, is named and known as the Wilson quartz lode mining claim, and it is situate in Summit Valley Mining District, county of Silver Bow, state of Montana.

That the name of the locator and claimant follows, and the undivided interest in the above described location claimed by each of the undersigned is indicated by the fraction set after each name.

FRANK WALKER,
Locator and Claimant.

STATE OF MONTANA,
County of Silver Bow, ss:

Frank Walker, being first duly sworn, on his oath, says: That he is a citizen of the United —— and that he is of lawful age; That he is the locator and claimant of the Wilson Quartz Lode Mining Claim; That said location is made in good faith; That this "Certificate of Location" is made in good faith and for the purpose of securing and enjoying all the rights and benefits of Chapter 16 of the Laws of 1907, passed by the Legislative Assembly of the state of Montana, entitled "An Act Governing the Manner of Locating, Recording and Holding Possession of Mining Claims upon the Public Domain of the United States within the state of Montana," approved February 18, 1907; and that the matters and things stated in the foregoing "Certificate of Location" are true of his own knowledge.

46 Subscribed and sworn to before me this 20th day of Nov., A. D. 1912.

[NOTARIAL SEAL.] CHAS. MATTISON,
Notary Public for the State of Montana,
Residing at Butte, Montana.

My Commission expires Oct. 10-14.

Recorded November 22, 1912, in Volume No. 10 of Quartz Lode Locations, at page 47.

47 EXHIBIT H.

Certificate of Location of the Marshall Quartz Lode Mining Claim.

I, Frank Walker, a citizen of the United States, of lawful age do hereby certify and declare as follows, to-wit:

That on the 16th day of November, A. D. 1912, the Marshall quartz lode mining claim, situated in Summit Valley Mining District county of Silver Bow, State of Montana, was duly discovered.

That on said day a written or printed notice of location of said claim was duly posted, conspicuously, at the point of discovery on

said claim, which said notice contained the name of the locator, the date of the location (which said date of location was the date of the posting of such notice), and the approximate area of the claim intended to be appropriated.

That thereafter and within thirty days after the posting of said notice of location the locator distinctly marked the location of said claim on the ground so that its boundaries could be readily traced by placing monuments at each corner and angle of said claim, which said monuments consists of trees, posts stumps, stones and boundaries described as follows, to-wit:

Beginning at the N. W. Cor. No. 1 of this claim, which is a mound 2 ft. high and 4 ft. wide and post 6" x 6" 5 ft. long marked Northwest Corner No. 1 of the Marshall Lode;

Thence first course easterly a distance of 1,500 feet to the N. E. cor. No. 2 of this claim, which is a mound 2 ft. high and 4 ft. wide, and post 6" x 6" 5 ft. long, marked Northeast Cor. No. 2 of the Marshall Lode;

Thence, second course, southerly, a distance of 600 feet to the S. E. Cor. No. 3 of this claim, which is a mound 2 ft. wide and 4 ft. wide, and post 6" x 6" and 5 Ft. long, marked Southeast Cor. No. 3 of the Marshall Lode;

Thence fourth Course Northerly a distance of 600 feet to
48 the N. W. Cor. No. 1, the place of beginning.

That each tree so marked was at least eight inches in diameter and blazed on four sides; that each post so marked was at least four inches square by four feet and six inches in length, set one foot in the ground, except where solid rock occurred at a less depth, in which case the post was set upon such rock and in all cases such posts were surrounded by a mound of earth and stone at least four feet in diameter by two feet in height; that each stump so marked was squared and was at least eight inches in diameter by four feet in height and was surrounded by a mound of earth and stone four feet in diameter by two feet in height; that each stone so marked was at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth and stone alongside at least four feet in diameter by two feet above the natural surface of the ground on the upper side of said boulder.

That within sixty days after the date of posting said notice of location, the locator named herein excavated a tunnel on said claim at the point of discovery 3 feet wide by 6 feet in height and 11 feet in length, and to the depth of at least ten feet, vertically, below the natural surface of the ground, and which said tunnel consists of at least one hundred and fifty cubic feet in excavation, said tunnel is leading from the bottom of a shaft 20 ft. deep 4 x 6 ft. square.

That said locator did there, in the bottom of said tunnel at the lowest vertical depth thereof, disclose a vein, lode or deposit so located.

That said locator claim- 300 feet in a — easterly direction and 1,200 feet in a westerly direction along the course of the vein each way from the discovery shaft, and 300 feet on each side of the cen-

ter of the vein, the said claim located being 600 feet wide by 1,500 feet in length.

That the following reference is hereby made to natural
49 objects and permanent monuments so as to identify said claim, to-wit: (none given).

That the following claims adjoin this claim to-wit:

On the north the Cop-er Queen and Rising Sun Quartz Lode Mining Claim-.

That the claim so located, marked and designated as aforesaid, is named and known as the Marshall Quartz Lode Mining Claim, and it is situate in Summit Valley Mining District, county of Silver Bow, state of Montana.

That the name of the locator and claimant follows, and the undivided interest in the above described location claimed by each of the undersigned is indicated by the fraction set after each name.

FRANK WALKER,
Locator and Claimant.

STATE OF MONTANA,
County of Silver Bow, ss:

Frank Walker, being first duly sworn, on his oath, says: That he is a citizen of the United States and that he is of lawful age; that he is the locator and claimant of the Marshall quartz lode mining claim; that said location is made in good faith; that this "Certificate of Location" is made in good faith and for the purpose of securing and enjoying all the rights and benefits of Chapter 16, of the laws of 1907, passed by the Legislative Assembly of the State of Montana, entitled "An Act Governing the manner of Location, Recording and Holding Possession of Mining Claims upon the Public Domain of the United States within the state of Montana," approved February 18, 1905; and that the matters and things stated in the fore-
50 going "Certificate of Location" are true of his own knowledge.

FRANK WALKER.

Subscribed and sworn to before me this 20th day of Nov., A. D. 1912.

[NOTARIAL SEAL.] CHAS. MATTISON,
Notary Public for the State of Montana,
Residing at Butte, Mont.

My Commission expires Oct. 10, '14.

Recorded November 22, 1912, in Volume No. 10 of Quartz Lode Locations, at page 46.

51 EXHIBIT I.

Certification of Location of the Wrangle Quartz Lode Mining Claim.

I, Frank Walker, a citizen of the United States, of Lawful age, do hereby certify and declare as follows, to-wit:

That on the 16th day of November, A. D. 1912, the Wrangle

Quartz Lode Mining Claim, situated in Summit Valley Mining District county of Silver Bow, state of Montana, was duly discovered.

That on said day a written or printed notice of location of said claim was duly posted, conspicuously, at the point of discovery on said claim, which said notice contained the name of the locator, the date of location (which said date of location was the date of posting of such notice) and the approximate area of the claim intended to be appropriated.

That thereafter and within thirty days after the posting of said notice of location, the locator distinctly marked the location of said claim on the ground, so that its boundaries could be readily traced, by placing monuments at each corner and angle of said claim, which said monuments consists of trees, posts, stumps, stones and boulders described as follows, to-wit:

Beginning at the N. W. cor. No. 1 of this claim, which is a mound two feet high and 4 feet wide and a post 5 feet long, 6″ x 6″ marked Northwest Cor. No. 1 of the Wrangle lode;

Thence first course easterly a distance of 1500 feet to the N. E. Cor. No. 2 of this claim, which is a mound 2 feet high and 4 feet wide, and post 6″ x 6″ 5 feet long marked Northeast Cor. No. 2 of the Wrangle Lode;

Thence second course southerly a distance of 600 feet to the S. E. Cor. No. 3 of this claim, which is a mound 2 ft. high and 4 ft. wide and post 6″ x 6″ 5 ft. long marked S. E. Cor. No. 3 of the Wrangle Lode.

52 Thence third course westerly a distance of 1500 feet to the S. W. Cor. No. 4 of this claim, which is a mound 2 ft. high and 4 ft. wide and post 6″ x 6″ 5 ft. long, marked S. W. Cor. No. 4 of the Wrangle Lode;

Thence fourth course Northerly, a distance of 600 feet to the N. W. Cor. No. 1, the place of beginning.

That each tree so marked was at least eight inches in diameter and blazed on four sides; that each post so marked was at least four inches square by four feet and six inches in length, set one foot in the ground, except where solid rock occurred at a less depth, in which case the post was set upon such rock and in all cases such posts were surrounded by a mound of earth and stone at least four feet in diameter by two feet in height; that each stump so marked was squared and was at least eight inches in diameter by four feet in height and was surrounded by a mound of earth and stone four feet in diameter by two feet in height; that each stone so marked was at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth and stone alongside at least four feet in diameter by two feet in height; that each boulder so marked was at least three feet above the natural surface of the ground on the upper side of said boulder.

That within sixty days after the date of posting said notice of location, the locator named herein excavated a tunnel on said claim at the point of discovery 2½ — wide by 5 ft. in height and 13 feet in length and to the depth of at least ten feet, vertically, below the natural surface of the ground, and which said tunnel consists of at least one hundred and fifty cubic feet of excavation.

That said locator did there, in the bottom of said tunnel at the lowest vertical depth thereof, disclose the vein, lode or deposit so located; the tunnel is run from a shaft 5′ x 6′ 6″ 31 feet deep
53 in a northerly direction.

The said locator claim- 350 feet in a- easterly direction and 1150 feet in a westerly direction along the course of the vein each way from the discovery shaft, and 300 feet on each side of the center of therein, the said claim located being 600 feet wide and 1500 feet in length.

That the following reference is hereby made to natural objects and permanent monuments so as to identify said claim, to-wit: (None given.)

That the following claims adjoin this claim, to-wit:

On the North the Bertha and Copper Queen Quartz Lode Mining claim.

On the South the Bull Whacker Quartz Lode Mining Claim;

On the east the Bertha Quartz Lode Mining Claim;

On the West the Wilson and Marshall Quartz Lode Mining claim.

That the claim so located, marked and designated as aforesaid is named and known as the Wrangle Quartz Lode Mining Claim, and it is situate in Summit Valley Mining District, County of Silver Bow, State of Montana.

That the name of the locator and claimant follows, and the undivided interest in the above described location claimed by each of the undersigned is indicated by the fraction set after each name.

FRANK WALKER,
Locator and Claimant.

STATE OF MONTANA,
County of Silver Bow:

Frank Walker, being first duly sworn, on his oath, says: That he is a citizen of the United States and that he is of lawful age; that he is the locator and claimant of the Wrangle Quartz Lode Mining Claim; that said location is made in good faith; that this
54 "Certificate of Location" is made in good faith and for the purpose of securing and enjoying all the rights and benefits of Chapter 16 of the Laws of 1907, passed by the Legislative Assembly of the state of Montana, entitled "An Act Governing the Manner of Locating, Recording and Holding Possession of Mining Claims upon the Public Domain of the United States within the state of Montana," approved February 18, 1907; and that the matters and things stated in the foregoing "Certificate of Location" are true of his own knowledge.

Subscribed and sworn to before me this 14th day of January, A. D. 1913.

[NOTARIAL SEAL.] ALLEN P. BOWIE,
Notary Public for the State of Montana,
Residing at Butte, Mont.

My Commission expires Feb. 27″, 1915.

Recorded January 14, 1913, in Volume No. 10 of Quartz Lode Locations, at page 78.

55 EXHIBIT J.

Certificate of Location of the Helen Quartz Lode Mining Claim.

I, Clinton C. Clark, a citizen of the United States, of lawful age, do hereby certify and declare as follows, to wit:

That on the 20th day of November, A. D. 1912, the Helen Quartz Lode Mining Claim situated in Summit Valley Mining District, county of Silver Bow, state of Montana, was duly discovered.

That on said day a written or printed Notice of location of said claim was duly posted, conspicuously, at the point of discovery on said claim, which said notice contained the name of the locator, the date of the location (which said date of location was the date of the posting of such notice) and the approximate area of the claim intended to be appropriated.

That thereafter and within thirty days after the posting of said notice of location, the locator distinctly marked the location of said claim on the ground so that its boundaries could be readily traced, by placing monuments at each corner and angle of said claim, which said monuments consist of posts as follows, to-wit:

Beginning at the N. E. Cor. No. 1 of this claim, which is a post 4″ 6″ x 5 feet long set one foot in the ground, marked Helen Lode Cor. No. 1 of the said Lode;

Thence first course southerly a distance of 600 feet to the S. E. Cor. No. 2 of this claim, which is a post 4″ x 6″ x five feet set one foot in the ground, marked S. E. Cor. No. 2 of the Helen Lode;

Thence second course westerly a distance of 1500 feet to the S. W. Cor. No. 3 of this claim, which is a post 4″ x 6″ x five feet set one foot in the ground, marked S. E. Cor. No. 2 of the Helen Lode;

56 Thence third course northerly a distance of 600 feet to the N. W. Cor. No. 4 of this claim, which is a post 4″ x 6″ x 5 feet set one foot in the ground, marked N. W. Cor. No. 4 of the Helen Lode;

Thence fourth course easterly a distance of 1500 feet to the N. E. Cor. No. 1, *of* the place of beginning.

That each post so marked was at least four inches square by four feet and six inches in length, set one foot in the ground, and in all cases such posts were surrounded by a mound of earth and stone at least four feet in diameter by two feet in height.

That within sixty days after the date of posting said notice of location, the locator named herein sunk a discovery shaft on said claim at the point of discovery four feet by five feet, to the depth of at least sixteen (16) feet, vertically, below the lowest part of the rim of such shaft at the surface, and that cubical contents of said shaft excavated is not less than one hundred and fifty cubic feet.

That said locator did there, in the bottom of said shaft, at the lowest vertical depth thereof, disclose the vein, lode and deposit so located, by showing the said lead in place, and by showing the well defined walls thereof.

That the following reference is hereby made to natural objects and permanent monuments so as to identify said claim, to-wit the adjoining claims are the Ella, Rising Sun and Copper Queen on the North, and on the east are the Bertha, Pacific and Colleen Bawn Lodes, and on the south is the Bullwhacker, and that the following claims adjoin this claim, to-wit: as herein described and are permanent monuments and natural objects.

That the claim so located, marked and designated as aforesaid is named and known as the Helen Quartz Lode Mining Claim, and it is situate in Summit Valley Mining District, county of Silver
57 Bow, state of Montana.

CLINTON C. CLARK,
Locator and Claimant.

STATE OF MONTANA,
County of Silver Bow, ss:

Clinton C. Clark, Being first duly sworn, on his oath, says: That he is a citizen of the United States, and that he is of lawful age; that he is the locator and claimant of the Helen Quartz Lode Mining Claim; that said location is made in good faith; that this "Certificate of Location" is made in good faith and for the purpose of securing and enjoying all the rights and benefits of Chapter 16 of the Laws of 1907, passed by the Legislative Assembly of the state of Montana, entitled "An Act Governing the Manner of Locating, Recording and Holding Possession of Mining Claims upon the Public Domain of the United States within the state of Montana," approved February 18, 1907; and that the matters and things stated in the foregoing "Certificate of Location" are true of his own knowledge.

CLINTON C. CLARK.

Subscribed and sworn to before me this 13th day of January, A. D. 1913.

[NOTARIAL SEAL.] J. E. HEALY,
Notary Public for the State of Montana,
Residing at Butte.

My Commission expires May 15, 1914.

Recorded January 14, 1913, in Volume No. 10 of Quartz Lode Locations, at page 79.

(Endorsed:) In the District Court of the United States, in and for the District of Montana. Olivia H. Hopkins, et al., Complainants, vs. Frank Walker, et al., Defendants. Bill. Filed Dec. 31, 1914, 3:17 P. M. Geo. W. Sproule, Clerk, by Harry H. Walker, Deputy Clerk.

The motion of defendant Elizabeth Brown to dismiss said bill, filed herein January 22, 1915, is in words and figures as follows, to-wit:

58 In the District Court of the United States in and for the District of Montana.

In Equity. No. —.

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY (a Corporation), and Anaconda Copper Mining Company (a Corporation), Complainants,

v.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Rachael Merriman, Bertha McGowan and Alice McGowan, Defendants.

Motion to Dismiss Bill of Complaint.

Now comes the defendant Elizabeth Brown, above named, and moves the court to dismiss the bill of complaint herein for the following reasons and on the following grounds:

(*a*) That the facts stated in said bill of complaint do not entitle the plaintiffs to the relief prayed for, or to any relief, in the above entitled court.

59 (*b*) That, on the facts stated in said bill of complaint, the above entitled court is without jurisdiction to try said cause.

FRED J. FURMAN,
A. J. VERHEYEN,
Attorneys for Moving Defendant.

Service of the above and foregoing Motion to Dismiss the Bill of Complaint is hereby acknowledged, and copy thereof received, this — day of January, A. D. 1915.

J. L. TEMPLEMAN,
JNO. A. SHELTON,
Solicitor for Complainant,
Washington Butte Mining Co.

(Endorsed:) No. 21. In the District Court of the United States, for the District of Montana. Olivia H. Hopkins, et al., Complainants, v. Frank Walker, et al., Defendants. Motion of defendant Elizabeth Brown to dismiss bill of complaint. Filed Jan. 22, 1915. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy Clerk. Fred J. Furman, A. J. Verheyen, Attorneys for Moving Defendant, Elizabeth Brown.

The motion of defendants Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, J. T. Fitzgerald, C. B. Nolan, Racheal Merriman, M. F. Cleary, E. J. Cleary, Adolph Keppler and

J. B. Woods, to dismiss said bill, filed herein January 21, 1915, is in words and figures as follows, to-wit:

60 In the District Court of the United States in and for the District of Montana.

In Equity.

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY (a Corporation), and Anaconda Copper Mining Company (a Corporation), Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Rachael Merriman, Bertha McGowan and Alice McGowan, Defendants.

Motion to Dismiss Bill of Complaint.

Now come the defendants, Frank Walker, Clinton C. Clark, Louis Mason, L. C. Clark, Johanna Farlin J. T. Fitzgerald, C. B. Nolan, Rachael Merriman, M. F. Cleary, E. J. Cleary, Adolph Keppler and J. B. Woods, above named, and move the Court to dismiss the Bill of Complaint herein for the following reasons and on the following grounds:

A. That the facts stated in said Bill of Complaint do not entitle the plaintiffs to the relief prayed for or to any relief in the above entitled Court.

B. That on the facts stated in said Bill of Complaint, the
61 above entitled Court is without jurisdiction to try said cause.

C. B. NOLAN,
T. J. WALSH AND
JAMES T. FITZGERALD,
Attorneys for Moving Defendants.

Service of the within and foregoing Motion to Dismiss the Bill of Complaint admitted, and copy thereof received this 21st day of January, 1915.

J. L. TEMPLEMAN,
JOHN A. SHELTON,
Solicitors for Complainant, Washington-Butte Mining Co.

(Endorsed:) No. 21. In the District Court of the United States, in and for the District of Montana. Olivia H. Hopkins, et al., Complainants, vs. Frank Walker, et al., Defendants. Motion to Dismiss Bill of Complaint. Filed Jan. 21, 1915. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy. C. B. Nolan, T. J. Walsh and James T. Fitzgerald, Attorneys for Moving Defendants.

The motion of defendant Nancy Hobbs to dismiss said bill, filed herein February 4, 1915, is in words and figures as follows, to-wit:

62 In the District Court of the United States in and for the District of Montana.

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, a Corporation, and Anaconda Copper Mining Company (a Corporation), Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Rachael Merriman, Bertha McGowan and Alice McGowan, Defendants.

Motion to Dismiss Bill of Complaint.

Comes now the defendant, Nancy Hobbs, above-named, and moves the court to dismiss the Bill of Complaint herein, for the following reasons, and upon the following grounds, to-wit:

A. That the facts in said Bill of Complaint do not entitle the plaintiffs to the relief prayed for, or to any relief in the above entitled court.

B. That on the facts stated in said Bill of Complaint, the above entitled court is without jurisdiction to try said cause.

E. H. POWERS,
JOHN A. SMITH,
Att'ys for Moving Defendant.

Service of the within and foregoing Motion to dismiss the Bill of Complaint admitted, and copy received this 4th day of February, 1915.

H. C. HOPKINS,
Solicitor for Complainant, Olivia H. Hopkins.
J. L. TEMPLEMAN,
JOHN A. SHELTON,
Solicitor- for Complainant,
Washington-Butte M'n'g Co., a Corporation.

L. O. EVANS,
Solicitor for Complainant,
Anaconda Copper M'n'g Co., a Corporation.

(Endorsed:) No. 21. In the District Court of the United States, in and for the District of Montana. Olivia H. Hopkins, et al., Complainants, vs. Frank Walker, et al., Defendants. Motion of Nancy Hobbs to dismiss bill of Complaint. Filed Feb. 4, 1915. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy Clerk. E. H. Powers, John A. Smith, Att'ys for Defendant Nancy Hobbs.

63 The motion of defendants Bertha McGowan and Alice McGowan to dismiss said bill, filed herein July 1, 1915, is in words and figures as follows, to-wit:

In the District Court of the United States in and for the District of Montana.

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, a Corporation, and Anaconda Copper Mining Company (a Corporation), Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Rachael Merriman, Bertha McGowan and Alice McGowan, Defendants.

Motion to Dismiss Bill of Complaint.

Comes now the defendants, Bertna McGowan and Alice McGowan, by their guardian ad litem, John A. Smith, and move the court to dismiss the Bill of Complaint herein, for the following reasons, and upon the following grounds, to-wit—

A. That the facts in said Bill of Complaint do not entitle the plaintiffs to the relief prayed for, or to any relief in the above entitled court.

B. That on the facts stated in said Bill of Complaint, the above entitled court is without jurisdiction to try said cause.

JOHN A. SMITH,
Att'y for Moving Defendants.

Service of the within and foregoing Motion to dismiss the Bill of Complaint admitted, and copy received this 1st day of July, 1915.

H. C. HOPKINS,
Solicitor for Complainant, Olivia H. Hopkins.
J. L. TEMPLEMAN,
JOHN A. SHELTON,
Solicitor- for Complainant,
Washington-Butte M'n'g Co., a Corporation.

L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,
D. M. KELLY,
Solicitor- for Complainant,
Anaconda Copper M'n'g Co., a Corporation.

(Endorsed:) No. 21. In the District Court of the United States, in and for the District of Montana. Olivia H. Hopkins, et al., Complainants, vs. Frank Walker, et al., Defendants. Motion of

Bertha McGowan and Alice McGowan to dismiss Bill of Complaint. Filed July 1, 1915. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy Clerk. John A. Smith, Att'y for moving defendants.

64 The said motions, and each and all of them, were argued and submitted to the court, and were sustained on the ground that the court had no jurisdiction of the said cause, and a decree made and entered herein dismissing the bill herein on the said ground.

It is further certified that the matter in controversy herein as shown by the said bill exceeds the sum or value of $3,000, exclusive of interest and costs.

Dated this 26 day of July, 1915.

FRANK H. RUDKIN,
Judge of the United States District Court for the Eastern District of Washington, Sitting as Judge of the United States District Court for the District of Montana.

Filed July 28, 1915.
GEO. W. SPROULE, *Clerk.*

65 Thereafter, on July 28, 1915, Petition for Appeal and Order Allowing Same were duly filed and entered herein, in the words and figures following, to wit:

66 In the District Court of the United States in and for the District of Montana.

No. 21. In Equity.

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, a Corporation, and Anaconda Copper Mining Company, a Corporation, Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan and Alice McGowan, Defendants.

Petition for Appeal and Order Allowing the Same.

To the Honorable Frank H. Rudkin, Judge of the United States District Court for the Eastern District of Washington, acting as United States District Judge for the District of Montana:

The above named complainants, Olivia H. Hopkins, Washington-Butte Mining Company, a corporation, and Anaconda Copper Mining Company, a corporation, feeling themselves aggrieved by the

decree made and entered in this cause on the 26th day of July, 1915, do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and they pray that their appeal be allowed and that citation issue as provided by law, and that a transcript of the record and proceedings and papers upon which said decree was based duly authenticated may be sent to the Supreme Court of the United States, and your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal, be made.

H. C. HOPKINS,
Solicitor for Complainant, Olivia H. Hopkins.

67 J. L. TEMPLEMAN,
JOHN A. SHELTON,
Solicitors for Complainant, Washington-Butte Mining Company.
L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS AND
D. M. KELLY,
Solicitors for Complainant, Anaconda Copper Mining Company.

The above and foregoing petition is granted and the appeal allowed upon giving a bond conditioned as required by law in the sum of $500.00.

Dated this 26th day of July, 1915.

FRANK H. RUDKIN,
Judge of the United States District Court for the Eastern District of Washington, Sitting as Judge of the United States District Court for the District of Montana.

Filed & entered July 28, 1915.

GEO. W. SPROULE, *Clerk.*

68 Thereafter, on July 28, 1915, Bond on Appeal, duly approved, was filed herein, in the words and figures following, to wit:

69 In the District Court of the United States in and for the District of Montana.

No. 21. In Equity.

OLIVIA H. HOPKINS, Washington-Butte Mining Company, a Corporation, and Anaconda Copper Mining Company, a Corporation, Complainants,

vs.

FRANK WALKER, CLINTON J. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan and Alice McGowan, Defendants.

Bond on Appeal.

Know all men by these presents; That we, Olivia H. Hopkins, Washington-Butte Mining Company, a corporation, and Anaconda Copper Mining Company, a corporation, as principals, and American Surety Co. of New York, a corporation, duly organized and existing under and by virtue of the laws of the State of New York, and duly licensed and authorized to furnish bonds in judicial proceedings in the State of Montana, are held and firmly bound unto the defendants above named, in the penal sum of Five Hundred ($500) Dollars, for the payment of which sum well and truly to be made, we bind ourselves, our successors and assigns jointly and severally firmly by these presents.

The condition of the foregoing obligation is such, that

Whereas, the above named complainants have or are about to appeal to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the said District Court of the United States, for the District of Montana;

Now, therefore, if the above named complainants Olivia H. Hopkins, Washington-Butte Mining Company, a corporation,
70 and Anaconda Copper Mining Company, a corporation, shall prosecute such appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation to be void, otherwise to be and remain in full force and effect.

In testimony whereof, the said Olivia H. Hopkins has hereunto signed her name, and the other parties hereto have caused their

corporate names to be signed hereto and their corporate seals to be hereunto affixed, at Butte, Montana, this 20th day of July, 1915.

OLIVIA H. HOPKINS,
WASHINGTON-BUTTE MINING COMPANY,
[CORPORATE SEAL.] By E. S. SHIELDS, *Secretary*,
[CORPORATE SEAL.] ANACONDA COPPER MINING CO.,
By J. T. ROBERTS, *As Asst. Secretary*,
Principals.
AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By L. A. KING, *Resident Vice President*,

Attest:

LEWIS A. SMITH,
Resident Assistant Secretary, Surety.

Order Approving Bond.

The above and foregoing bond on appeal is hereby approved this 26 day of July, 1915.

FRANK H. RUDKIN,
Judge of the United States District Court for the Eastern District of Washington, Sitting as Judge of the United States District Court for the District of Montana.

Filed July 28, 1915.
GEO. W. SPROULE, *Clerk.*

71 Thereafter, on August 7, 1915, a Citation duly issued on July 26, 1915, and served, was returned and filed herein, which said Citation is hereto annexed and is in the words and figures following, to wit:

72 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan, and Alice McGowan, Greeting:

You, and each of you, are hereby cited and admonished to be and appear in the Supreme Court of the United States, to be held at the City of Washington, within sixty days from the date of this writ, pursuant to an order allowing such appeal filed in the office of the

Clerk of the District Court of the United States, for the District of Montana, in a suit wherein Olivia H. Hopkins, Washington-Butte Mining Company, a corporation, and Anaconda Copper Mining Company, a corporation, are complainants, and Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan and Alice McGowan, are defendants, then and there to show cause, if any there be, why the decree rendered herein against the said complainants as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 26 day of July, in the Year of our Lord, One Thousand Nine Hundred Fifteen.

FRANK H. RUDKIN,
Judge of the United States District Court for the Eastern District of Washington, Sitting as Judge of the United States District Court for the District of Montana.

73 Due service of the above and foregoing citation, by copy thereof, admitted this 30th day of July, 1915.

JAMES T. FITZGERALD,
Solicitors for Defendants Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, J. T. Fitzgerald, C. B. Nolan, Racheal Merriman, M. F. Cleary, E. J. Cleary, Adolph Keppler, and J. B. Woods.
FRED J. FURMAN,
A. J. VERHEYEN,
Solicitors for Defendants Lou H. Hadwick and Elizabeth Brown.
——— ———,
Solicitor for Defendant Nancy Hobbs.
LOUIS E. HAVEN,
Guardian ad Litem for Defendants Bertha McGowan and Alice McGowan.
A. F. BUSHNELL,
ANNIE STALKER,
Defendants.

74 Due service of the citation issued herein on the 30th day of July, 1915, by copy thereof, is hereby admitted this 3rd day of August, 1915.

NANCY HOBBS,
Defendant.

75 Due and sufficient service of the Citation issued herein on the 30th day of July, 1915, by copy thereof, admitted this 3rd day of August, 1915.

W. D. THORNTON,
Defendant.

76 [Endorsed:] No. 21. Citation. Filed August 7 1915. Geo. W. Sproule, Clerk, by Harry H. Walker, Deputy Clerk.

77 Thereafter, on August 16, 1915, the plaintiffs filed their Præcipe for Transcript on Appeal herein, in the words and figures following, to wit:

78 In the District Court of the United States in and for the District of Montana.

No. 21. (In Equity.)

OLIVIA H. HOPKINS, WASHINGTON BUTTE MINING COMPANY, a Corporation, and Anaconda Copper Mining Company, a Corporation, Complainants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, Johanna Farlin, A. F. Bushnell, Patrick Leroux, J. T. Fitzgerald, Elizabeth Brown, C. B. Nolan, W. D. Thornton, Nancy Hobbs, Lou H. Hadwick, Annie Stalker, M. F. Cleary, E. J. Cleary, Adolph Keppler, J. B. Woods, Racheal Merriman, Bertha McGowan, and Alice McGowan, Defendants.

Præcipe to the Clerk for Preparation of Transcript on Appeal.

To George W. Sproule, Clerk of the United States District Court in and for the District of Montana:

You will please prepare transcript on appeal herein and include therein the following papers, to-wit:

1. Opinion filed July 10, 1915.
2. Decree.
3. Assignment of errors.
4. Certificate of question of jurisdiction.
5. Petition for appeal and order allowing the same.
6. Bond on appeal and order approving same.
7. Citation.

Dated this 10th day of August, 1915.

H. C. HOPKINS,
Solicitor for Complainant Olivia H. Hopkins.
L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS AND
D. M. KELLY,
Solicitors for Complainant Anaconda Copper Mining Co.

79 J. L. TEMPLEMAN AND
JOHN A. SHELTON,
Solicitors for Complainant Washington-Butte Mining Co.

Due service of the above and foregoing præcipe admitted this 14th day of August, 1915, and the right to file a præcipe herein indicating additional portions of the record to be included in the said transcript is hereby waived, and consent is given that the said transcript may be immediately prepared containing only the portions of the said record indicated in the above and foregoing præcipe.

——— ———,
JAMES T. FITZGERALD,
Solicitors for Defendants Frank Walker, Clinton C. Clark, Louis Mason, L. O. Clark, Johanna Farlin, J. T. Fitzgerald, C. B. Nolan, Racheal Merriman, M. F. Cleary, E. J. Cleary, Adolph Keppler, and J. B. Woods.
A. F. BUSHNELL, *Defendant.*
——— ———,
——— ———,
Solicitors for Defendants Lou H. Hadwick and Elizabeth Brown.
LOUIS E. HAVEN,
Solicitor and Guardian ad Litem for Defendants Bertha McGowan and Alice McGowan.

80 STATE OF MONTANA,
County of Silver Bow, ss:

Lillian Kaukola, being first duly sworn deposes and says; that she served the above and foregoing præcipe upon the following named defendants on the 14th day of August, 1915, by depositing for each of said defendants a true copy thereof enclosed in a wrapper, postage prepaid, addressed to each of said defendants, or his or her attorney, as hereinafter stated, in a U. S. Postoffice Box at Butte, Montana, to-wit: On the defendant W. D. Thornton, addressed W. D. Thornton, Esq., 42 Broadway, room 227, New York City, New York; Annie Stalker, addressed Annie Stalker, St. John, Stafford County, Kansas; Nancy Hobbs, addressed to E. H. Powers, Esq., attorney at law, Jacksboro, Campbell County, Tennessee; Lou H. Hadwick and Elizabeth Brown, addressed to Fred J. Furman, attorney at law, Clark Block, Butte, Montana.

LILLIAN KAUKOLA.

Subscribed and sworn to before me this 14th day of August, 1915.
[SEAL.] A. A. GRORUD,
Notary Public in and for the State of Montana, Residing at Butte, Montana.

My commission expires Nov. 19, 1916.

STATE OF MONTANA,
County of Silver Bow, ss:

John A. Shelton, being first duly sworn, deposes and says; that he served a true copy of the above and foregoing præcipe on Fred J. Furman and A. J. Verheyen, solicitors for defendants Lou H.

Hadwick and Elizabeth Brown, on the 14th day of August, 1915, at two o'clock P. M. of said day, by depositing a true copy of the same in a conspicuous place in their office, at Butte, Montana, to-wit—in front of the entrance door of said office, they being absent from the said office at the said time and no person being in charge thereof.

JOHN A. SHELTON.

Subscribed and sworn to before me this 14th day of August, 1915.

[SEAL.] A. A. GRORUD,
Notary Public in and for the State of Montana,
Residing at Butte, Montana.

My commission expires Nov. 19, 1916.

Filed Aug. 16, 1915.
GEO. W. SPROULE, *Clerk.*

81 *Clerk's Certificate to Transcript of Record.*

UNITED STATES OF AMERICA,
District of Montana, ss:

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the Supreme Court of the United States, that the foregoing volume of 80 pages, numbered consecutively from 1 to 80, inclusive, is a full, true, correct and compared transcript of the original Opinion, Decree, Assignment of Errors, Certificate of Question of Jurisdiction, Petition for Appeal and Order Allowing Same, Bond on Appeal, and Præcipe for Transcript on Appeal, mentioned in said præcipe for transcript, as appears from the original records and files of said court in my possession as such Clerk; and I further certify and return that I have annexed to said transcript and included within said paging the original Citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Thirteen 85/100 Dollars ($13.85) and have been paid by the appellants.

Witness my hand and the seal of said Court at Helena, Montana, this 24th day of August, A. D. 1915.

[Seal United States District Court, District of Montana, 1890.]

GEO. W. SPROULE, *Clerk,*
By C. R. GARLOW,
Deputy Clerk.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 8/24/1915. C. R. G.]

Endorsed on cover: File No. 24,900. Montana D. C. U. S. Term No. 617. Olivia H. Hopkins, Washington-Butte Mining Company, and Anaconda Copper Mining Company, appellants, vs. Frank Walker, Clinton C. Clark, Louis Mason et al. Filed August 31st, 1915. File No. 24,900.

MOTION AND NOTICE OF MOTION TO ADVANCE AND TO SUBMIT

Office Supreme Court, U. S.
FILED
SEP 30 1915
JAMES D. MAHER
CLERK

IN THE SUPREME COURT OF THE UNITED STATES,

No. [redacted]234 October Term, 191[redacted]

File No. 24,900.

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, a Corporation, and ANACONDA COPPER MINING COMPANY, a Corporation,

Appellants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, JOHANNA FARLIN, A. F. BUSHNELL, PATRICK LEROUX, J. T. FITZGERALD, ELIZABETH BROWN, C. B. NOLAN, W. D. THORNTON, NANCY HOBBS, LOU H. HADWICK, ANNIE STALKER, M. F. CLEARY, E. J. CLEARY, ADOLPH KEPPLER, J. B. WOODS, RACHAEL MERRIMAN, BERTHA McGOWAN and ALICE McGOWAN.

Appellees.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1915.

OLIVIA H. HOPKINS, WASHINGTON-BUTTE MINING COMPANY, a Corporation, and ANACONDA COPPER MINING COMPANY, a Corporation,

Appellants,

vs.

FRANK WALKER, CLINTON C. CLARK, LOUIS MASON, L. O. CLARK, JOHANNA FARLIN, A. F. BUSHNELL, PATRICK LEROUX, J. T. FITZGERALD, ELIZABETH BROWN, C. B. NOLAN, W. D. THORNTON, NANCY HOBBS, LOU H. HADWICK, ANNIE STALKER, M. F. CLEARY, E. J. CLEARY, ADOLPH KEPPLER, J. B. WOODS, RACHAEL MERRIMAN, BERTHA McGOWAN and ALICE McGOWAN.

Appellees.

MOTION AND NOTICE OF MOTION TO ADVANCE AND TO SUBMIT.

Come now the appellants herein and in pursuance of Rule 32 of this court move the court that the above entitled cause be advanced for hearing, and when so advanced that the same be submitted to the court for decision.

This motion is made on the ground that this cause was brought into this court by appeal from the District Court of the United States, for the District of Montana, under the provisions of Section 238, Act of March 3, 1911, Chapter 231, and the only question in issue is the question of juris-

diction of the court below, a decree having been rendered in the said court dismissing the said cause for an alleged lack of jurisdiction and the question of jurisdiction only having been certified to this court for its decision.

H. C. HOPKINS and
JOHN A. SHELTON,
Solicitors for Appellant,
Olivia H. Hopkins.

L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,
D. M. KELLY,
Solicitors for Appellant,
Anaconda Copper Mining Co.

J. L. TEMPLEMAN,
JOHN A. SHELTON,
Solicitors for Appellant,
Washington-Butte Mining Co.

To the Appellees, and to Messrs. T. J. Walsh, C. B. Nolan, J. T. Fitzgerald, Fred J. Furman, A. J. Verheyen, and Louis E. Haven, their solicitors:

You, and each of you, will please take notice that the above and foregoing motion will be submitted to the court, at the courtroom thereof, on Monday, the 18th day of October, 1915, at the hour of the opening of court on said day, or as soon thereafter as the matter can be heard.

H. C. HOPKINS and
JOHN A. SHELTON,
Solicitors for Appellant,
Olivia H. Hopkins,

L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,
D. M. KELLY,
Solicitors for Appellant,
Anaconda Copper Mining Co.

J. L. TEMPLEMAN,
JOHN A. SHELTON,
Solicitors for Appellant,
Washington-Butte Mining Co.